

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 316

HAWAIIAN HOME LANDS TRUST  
INDIVIDUAL CLAIMS REVIEW PANEL  
ADMINISTRATIVE PRACTICE AND PROCEDURE

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### SUBCHAPTER 1

#### GENERAL PROVISIONS

§16-316-1 Purpose, scope, and construction. This chapter is intended to provide uniform rules of administrative procedure to govern all proceedings brought before the panel, the purpose of which is to obtain:

- (1) A determination of any claim or controverted matter within the panel's jurisdiction through an evidentiary hearing;
- (2) A declaration as to the applicability, with respect to a factual situation, of any rule or order of the panel or of any statute which the panel is required to administer or enforce; or
- (3) The adoption, modification, or repeal of any rule of the panel.

This chapter shall be liberally construed to effectuate the purposes of chapter 674, HRS, and to secure the just, equitable, speedy, and inexpensive resolution of matters brought before the panel. Nothing in this chapter shall be construed to

limit the power or authority of the panel as set out in chapter 674, HRS. Whenever this chapter is silent on a matter, the panel or hearings officer may refer to the Hawaii Rules of Civil Procedure for guidance. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-2 Definitions. As used in this chapter, unless the context otherwise requires;

"Aggrieved person" means any person who shall be adversely affected by an action, decision, order, or rule of the panel or who shall be adversely affected by the action or conduct of any person if the action or conduct is within the panel's jurisdiction.

"Beneficiary" means any person eligible to receive benefits of homesteading and related programs from the Hawaiian home lands trust.

"Claim" means a written request filed with the panel by a claimant alleging that the claimant has suffered actual damages arising out of a breach of trust occurring between August 21, 1959 and June 30, 1988, which was caused by an act or omission of an employee of the State in the management and disposition of trust resources.

"Claimant" means a beneficiary who applies to the panel for a review of a claim for actual damages relating to the trust.

"Commission" means the Hawaiian homes commission.

"Department" means the department of Hawaiian home lands and any division or branch thereof.

"Declaratory relief" means the panel's declaration as to the applicability or non-applicability with respect to a factual situation of any rule or order of the panel or of a statute which the panel is required to administer or enforce.

"Employee of the State" means the officers and employees of any state agency and any persons acting in behalf of a state agency in an official capacity.

"Hearings officer" means a licensed attorney, duly appointed by the panel pursuant to section 674-8(d), HRS, to hold a hearing for the purpose of taking evidence or oral argument and making a recommended decision in any case or controversy within the jurisdiction of the panel.

"Hearings relief" means the determination by the panel of the legal rights, duties, or privileges of specific parties which are required by law to be determined after an opportunity for agency hearing.

"HRS" means Hawaii Revised Statutes.

"Panel" means the Hawaiian home lands trust individual claims review panel.

"Party" means each person named in a proceeding, or any interested or aggrieved person permitted or entitled as of right to participate in a proceeding

before the panel in the capacity of a claimant, petitioner, respondent, intervenor, or in a capacity other than that of a witness.

"Petition" means an application to the panel which seeks declaratory relief or rule relief pursuant to this chapter.

"Petitioner" means a party who files a petition for declaratory relief or rule relief pursuant to this chapter.

"Person" means an individual, partnership, corporation, association, or public or private organization of any character, other than the panel.

"Respondent" means the party against whom the claim is filed, the party against whom relief is sought, or any party who contests or controverts a proceeding or petition.

"Rule" shall have the same meaning as provided in section 91-1(4), HRS.

"Rule relief" means the adoption, modification, or repeal of any regulatory rule by the panel.

"Trust" means the Hawaiian home lands trust. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-3 Commencement of proceedings. A proceeding shall commence by the filing of a claim or a petition for a permitted relief with the panel. Upon the filing of a claim or a petition, the panel shall docket the matter and assign it a docket number. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§92-2, 674-6)

§16-316-4 Legal counsel. (a) A claimant may apply, pursuant to such process established by the panel, to have the panel provide for legal assistance to the claimant in the preparation and presentation of a claim.

(b) Any party may, at the party's own expense, be represented by legal counsel at any stage of the proceeding before the panel or hearings officer.

(c) Substitution of legal counsel shall be effective upon filing of a notice of the substitution by the party represented.

(d) Withdrawal of legal counsel in the absence of a concurrent substitution shall be effective only upon the approval of the panel or hearings officer and shall be subject to the guidelines of DR 2-110 of the Code of Professional Responsibility and other applicable law.

(e) No party shall substitute or withdraw legal counsel for the purpose of delaying a proceeding. Substitution or withdrawal of counsel less than thirty days before the hearing shall not be considered sufficient reason to continue the hearing, unless good cause is shown. [Eff 1/21/93] (Auth: HRS §§91-2, 674-5, 674-6) (Imp: HRS §§674-5, 674-6)

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§16-316-5 Individual representing party. When an individual, acting in a representative capacity on behalf of a party, appears in a proceeding or signs a document submitted to the panel or hearings officer, that personal appearance or signature shall constitute a representation that the individual is lawfully authorized and qualified to so act. The individual shall furnish proof of authorization and qualification to act in that capacity. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-6 Substitution of parties. Upon motion and for good cause shown, substitution of parties may be ordered, provided that the substitution shall:

- (1) Be conducive to effectuating the ends of justice;
- (2) Not unduly delay the proceeding; and
- (3) Not otherwise unduly harass, hinder, or prejudice the rights of any party.

In the case of the death or legal incapacity of any party, substitution may be ordered without the necessity of filing a motion therefor. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-7 Intervention. Upon timely motion and at the discretion of the panel or the hearings officer, any person may be permitted to intervene and be admitted as a party in a proceeding before the panel or hearings officer if that person has a substantial interest in the outcome of the proceeding which is not protected by the interests of any of the parties, or the intervention shall be conducive to effectuating the ends of justice and to achieving the goals and purposes of the panel; provided that no intervention shall be permitted if the intervention shall unduly delay the proceeding or harass, hinder, or prejudice the rights of any party to the proceeding. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-8 Consolidation. The panel or hearings officer sua sponte, or upon any party's motion timely made and for good cause shown, may consolidate two or more proceedings which involve substantially the same issues, arise out of the same general transaction, or involve the same person or persons, provided the consolidation shall be conducive to effectuating the ends of justice and shall not unduly delay the proceedings or hinder, harass, or prejudice any party. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-9 Format and certification of pleadings. (a) Claims, petitions, motions, and other pleadings shall be typed or printed in ten or twelve point pica or equivalent type size upon good quality paper, 8-1/2 x 11 inches in size and of at least sixteen weight, except that documentary exhibits may be larger, if folded to the size of the pleadings to which they are attached.

(b) All copies shall be legible on paper 8-1/2 x 11 inches in size and of at least sixteen weight.

(c) The first page of every pleading shall set forth the name, address, and phone number of the party, the party's attorney, if any, the title of the particular pleading, the docket number, and the name of the proceeding.

(d) All pleadings shall be signed in black or other photo-reproducible ink by the party filing the pleadings or by the party's authorized agent. The signature shall constitute certification that the person so signing has read the pleading and that to the best of the person's knowledge, information, and belief, the pleading is true or has good grounds to support it and is not submitted for the purpose of hindering, harassing, or delaying any party or proceeding.

(e) Unless otherwise provided, the original and two copies of all pleadings, motions, memoranda, and other documents shall be filed by personal delivery or by mail addressed to the panel. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-10 RESERVED.

§16-316-11 RESERVED.

§16-316-12 Service, generally. Unless otherwise provided by this chapter or by other applicable law, whenever service is required to be made on any party to a proceeding before the panel, the service shall be made personally or by first class mail, at the party's last known address or to the party's attorney of record or to any other individual representing the party in the proceeding. Service shall be deemed complete upon mailing. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-13 Service by whom. (a) Unless otherwise provided by this chapter, a party filing a pleading, motion, memorandum, document, or other paper shall cause a copy of the pleading, motion, memorandum, document, or other paper to be served upon each of the other parties to the proceeding, or upon any

agent or attorney representing the other party. The party shall file a certificate of service.

(b) The panel shall cause each respondent to be served with a copy of the claim or petition.

(c) Unless otherwise provided by this chapter, the panel shall cause to be served all notices, documents, orders, and other papers issued by it or its hearings officers. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-14 Time. (a) Unless otherwise provided by this chapter, in computing any period of time prescribed or allowed by this chapter, the day of the act, event, or default after which the designated period of time is to run, shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday in the State, in which event the period runs until the next day which is neither a Saturday, Sunday, nor a holiday. Intermediate Saturdays, Sundays, and holidays, including half holidays, shall not be included in any computation of time.

(b) Documents will be accepted for filing at the panel's office between the hours of 7:45 a.m. and 4:30 p.m., Monday to Friday, inclusive, except on those days enumerated in section 8-1, HRS, as holidays.

(c) Two additional days shall be added to the computation of any time period for the filing of pleadings, documents or other papers sent to the panel by mail. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-15 Extensions of time. Unless otherwise provided, the panel or hearings officer may extend the time within which any action shall be taken at the request of any party. The panel or hearings officer, in their sole discretion, may require that the extension be stipulated to by all parties to the proceeding or that the request be by motion for good cause shown as to why the extension should be granted. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-16 Motions. (a) An application for any relief or order shall be by motion which, unless made during a hearing, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.



(b) Motions referring to facts not of record shall be supported by affidavits, and if involving a question of law shall be accompanied by a memorandum in support.

(c) If a hearing is held on the motion, the party filing the motion shall serve a copy of the motion and notice of hearing on the motion upon all parties not later than seventy-two hours before the hearing and the opposing party shall file and serve any counter affidavits and memorandum in opposition not less than twenty-four hours before the hearing.

(d) Motions shall be filed with the panel.

(e) Failure to comply with the requirements of this section may be the basis for denial of any motion.

(f) The decision on the motion may be made orally at the time of the hearing on the motion, or in writing, or as part of the panel's decision or the hearings officer's recommended decision. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-17 Powers of the panel or hearings officer in conducting hearing.

Unless otherwise provided by law, the panel or hearings officer shall have the powers, in conduction a hearing, without limitation:

- (1) To hold hearings and issue notices;
- (2) To administer oaths and affirmations;
- (3) To consolidate hearings or sever proceedings, provided that those actions shall be conducive to effectuating the ends of justice and shall not unduly delay the proceedings or hinder, harass, or prejudice any party;
- (4) To subpoena and examine witnesses;
- (5) To issue subpoenas;
- (6) To rule upon offers of proof, to receive relevant evidence, and to exclude evidence which is irrelevant, immaterial, repetitious, cumulative, or merely scandalous and accordingly may restrict lines of questioning or testimony;
- (7) To regulate the course and conduct of the hearing;
- (8) To regulate the manner of any examination so as to prevent the needless and unreasonable harassment, intimidation, or embarrassment of any witness or party at the hearing;
- (9) To remove disruptive individuals, including any party, legal counsel, witness, or observer;
- (10) To hold conferences, including prehearing conferences, before or during the hearing, for the settlement or simplification of issues;
- (11) To rule on motions and to dispose of procedural matters;

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- (12) To certify any question to the panel for its consideration and disposition;
- (13) To submit in writing any report or recommended decision together with the findings of fact and conclusions of law and a recommended order to the panel for its consideration and final disposition;
- (14) To dispose of any other matter that normally and properly arises in the course of the proceedings and to take any action authorized by this chapter, chapter 91, HRS, or any other related laws; and
- (15) To examine, after notice to all parties, any site or tangible evidence relevant to the case. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§674-6, 674-8, 674-9)

§16-316-18 Subpoenas. (a) The panel or hearings officer shall have the power to issue subpoenas requiring the attendance of witnesses or the production of documents at the hearing. The panel or hearings officer may require that any request for the issuance of a subpoena identify with particularity the person to be subpoenaed or the documents desired. Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in courts in the State and the fees and mileage shall be paid by the party at whose instance the subpoena issues.

(b) Upon motion timely made, or sua sponte, the panel or hearings officer may:

- (1) Quash or modify the subpoena if it is unreasonable and oppressive; or
- (2) Condition denial of the motion upon advancement by the requesting party of the costs of producing the documents. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§674-6, 674-8)

§16-316-19 Absence of hearings officer. When a claim or petition has been assigned to a hearings officer for hearing or further proceedings, the powers and duties to be performed by the hearings officer in connection with the proceeding, without abatement of the proceeding, may be assigned to another hearings officer, provided no hearings officer shall render a report with recommendations to the panel for its consideration and disposition unless that hearings officer was present at opening and closing arguments and all presentations of evidence concerning those matters. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-20 Disqualification of member of panel or hearings officer. (a)

No matter shall be heard by a member of the panel or by a hearings officer who:

- (1) Has any direct pecuniary interest in the matter being heard;
- (2) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney;
- (3) Has participated in the investigation preceding the institution of the proceeding or has participated in the development of the evidence to be introduced in the proceeding; or
- (4) Has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding which will prevent a fair hearing by the member of the panel or hearings officer.

(b) Any member of the panel or hearings officer may be disqualified from hearing the matter sua sponte, or upon motion of any party. Any motion to disqualify a member of the panel or hearings officer shall be filed and decided before the evidentiary portion the hearing. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-21 Evidence. (a) The admissibility of evidence at the hearing shall not be governed by the laws of evidence and all relevant oral or documentary evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Irrelevant, immaterial, or unduly repetitious material shall not be admitted into evidence. The panel or hearings officer shall give effect to the privileges recognized at law.

(b) Documentary evidence may be received in the form of copies, provided that, upon request, all other parties to the proceeding shall be given an opportunity to compare the copy with the original. If the original is not available, a copy may still be admissible but the nonavailability of the original and the reasons therefor shall be considered by the panel or hearings officer when considering the weight of the documentary evidence.

(c) The panel or the hearings officer may take notice of judicially recognizable facts and of generally recognized technical or scientific facts. The parties, whenever possible, shall be notified before the hearing of the material to be so noticed and shall be afforded an opportunity at the hearing to contest the facts so noticed.

(d) Except as otherwise provided by law, the burden of proof, including the burden of producing the evidence and the burden of persuasion, shall be upon the party initiating the proceeding. Proof of a matter shall be by a preponderance

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of the evidence. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6, 674-9) (Imp: HRS §§674-6, 674-9)

§16-316-22 Decision, generally. (a) Unless otherwise provided, every decision and order issued by the panel shall be in writing or stated in the record. Where the case has been contested and the decision is adverse to any party, the decision shall be accompanied by separate findings of fact and conclusions of law.

(b) The panel shall cause a certified copy of the decision and order together with the findings of fact and conclusions of law to be transmitted by hand or by certified or registered mail, return receipt requested, to each party within a reasonable time. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§674-6, 674-10)

§16-316-23 Motion for reconsideration. Within ten days after receipt of any final order, any party may move the panel to reconsider its final order or decision. The motion shall be filed with the panel and shall state specifically what points of law or fact the panel has overlooked or misunderstood together with brief arguments on the points raised. No answer or reply to the motion shall be considered unless requested by the panel. Oral argument on the motion shall be within the discretion of the panel. Only one motion for reconsideration may be filed by each party and the filing of the motion shall not operate as a stay of the panel's final order or decision. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-24 Ex parte communications. (a) In any proceeding before the panel:

- (1) Neither the department, commission, nor any person, either in private or public life, shall communicate privately on the merits of the case with any member of the panel, the panel's staff or with the hearings officer designated to hear and decide the matter, unless specifically provided for by law; and
- (2) No member of the panel's staff or any other government agency who participates in the hearing as a witness or counsel shall privately communicate on the merits of the case with any member of the panel or with the hearings officer designated to hear and decide the matter, unless specifically provided for by law.

(b) It shall be improper for the department, commission, or any person interested in a proceeding to seek to influence the judgment of the panel or hearings officer.

(c) Except as otherwise provided by this chapter or other applicable law, it shall be improper for the panel staff or any other person:

- (1) To disclose or reveal to any member of the panel or hearings officer designated to hear and decide the matter the contents of any investigatory report concerning the matter before the panel or hearings officer; or
- (2) To furnish the report or a copy thereof to any member of the panel or hearings officer designated to hear and decide the matter.

Nothing in this subsection, which is intended to prohibit the ex parte disclosure of the investigative report, shall prohibit the disclosure of the investigative report to the panel or hearings officer when conducting a hearing in conformance with this chapter. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

## SUBCHAPTER 2

### HEARING RELIEF

§16-316-25 Filing of claim and request for hearing. (a) Any beneficiary claiming to have suffered actual damages as a result of an act or omission of an employee of the State in the management and disposition of trust resources which occurred between August 21, 1959 and June 30, 1988 may file a claim with the panel and request a hearing.

(b) The claim shall be in writing and, where feasible, upon forms furnished by the panel's executive director. The claim shall be signed by the claimant.

(c) The original and two copies of the claim shall be filed by personal delivery or by mail, addressed to the panel. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6, 674-7)

§16-316-26 Contents of claim. (a) Each claim shall contain the following:

- (1) The full name, address, and telephone number (if any) of the claimant;
- (2) A plain and concise statement of the facts constituting the alleged act or omission of an employee of the State in the management and disposition of trust resources;

- (3) The date or dates on which the alleged act or omission occurred; or if the alleged act or omission is of a continuing nature, the dates between which the continuing acts or omission are alleged to have occurred; or the dates the acts or omissions commenced;
  - (4) The actual damage or damages suffered by the claimant; and
  - (5) Other information as required by the panel's executive director.
- (b) Notwithstanding subsection (a), a claim is deemed filed if the panel receives from an individual a written statement sufficiently precise to identify the parties and describe with reasonable accuracy the alleged act or omission of an employee of the State in the management and disposition of trust resources. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-27 Action by panel. (a) Unless otherwise provided by law, upon the filing of the claim, and as expeditiously as possible, the panel or its designee shall determine whether or not to proceed further on the claim.

(b) If the panel determines to proceed further, it shall cause the claim to be served upon the respondent pursuant to section 16-316-13.

(c) If the panel determines not to proceed further, the panel shall promptly provide the claimant with a written notice of any determination not to proceed further, together with a statement as to the reasons therefor. The claimant may request reconsideration of the panel's determination pursuant to section 16-316-23, or pursue any other remedy available by law. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-28 Dismissal of claim. (a) A claim may be voluntarily dismissed by the claimant without order of the panel or hearings officer by:

- (1) Filing a notice of dismissal at any time before service of the claim on the respondent or respondents; or
- (2) Filing a stipulation of dismissal signed by all parties who have been served with the claim or appeared in the action.

Unless otherwise stated in the notice of dismissal or stipulation, the dismissal shall be without prejudice, except that a notice of dismissal shall operate as an adjudication upon the merits when filed by a claimant who has once dismissed a claim based on or including the same claim before the panel.

(b) Except as provided in subsection (a), a claim shall not be dismissed except upon motion, which may be oral if made at the hearing, and on order of the panel or hearings officer granting the motion and upon such terms and conditions as the panel or hearings officer deems proper. Unless otherwise specified in the order, a dismissal under this subsection shall be without prejudice.

(c) The panel or hearings officer may, upon the motion of any party, or sua sponte, issue a notice of proposed dismissal to any claimant if:

- (1) The claimant cannot be located, provided that reasonable efforts have been made to locate the claimant and the claimant has not responded within thirty days to a letter sent by the panel to the claimant's last known address; or
- (2) The claimant has failed to prosecute or otherwise pursue the claim within six months from the filing of the claim, excluding periods of delay caused by a party other than the claimant; or
- (3) The claimant fails to comply with this chapter or any order of the panel or hearings officer.

The notice of proposed dismissal shall set forth the basis for the proposed dismissal and shall provide an opportunity for the claimant to request a hearing to contest the proposed dismissal at least fifteen days prior to the actual dismissal. The notice of proposed dismissal shall also provide that in the event the claimant does not request a hearing to contest the proposed dismissal within the time period specified in the notice of proposed dismissal, the panel or hearings officer may thereafter issue an order dismissing the proceedings with prejudice. If a claimant requests a hearing to contest the proposed dismissal within the time period specified in the notice of proposed dismissal, the panel or hearings officer shall schedule a hearing in accordance with this chapter or dissolve the notice of proposed dismissal. The claimant shall have the burden of showing why the claim should not be dismissed pursuant to this section.

(d) Unless the order of dismissal issued by the panel or hearings officer specifies otherwise, a dismissal under subsection (c) and any other dismissal not provided for in this section, except a dismissal for lack of jurisdiction or improper venue, shall operate as an adjudication upon the merits. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §674-6)

§16-316-29 Response. (a) In all proceedings for relief under this subchapter, the department shall be made a party respondent to the proceedings and shall be served accordingly.

(b) Within twenty days after the service of any claim, each respondent shall file and serve upon the claimant and the panel a written response stating briefly therein facts, circumstances, laws, rules, or reasons in defense and shall further specifically admit or deny the allegations of the claim. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-30 Panel's investigation, fact-finding, and subpoena power. (a) After the filing of a claim, the panel shall cause the allegations contained in the claim to be investigated.

(b) The panel or its designee may issue subpoenas for the production of documents or the examination of witnesses deemed necessary for the investigation of a claim. The panel or its designee may require parties to provide written responses to requests for information, including but not limited to, interrogatories and request for admissions or for the production of documents.

(c) If a party or a witness refuses to honor a subpoena or if a party fails to respond to a claim or a request for information within the time allowed for such responses under the Hawaii Rules of Civil Procedure, the panel or its designee may file a petition for appropriate temporary relief in the circuit court.

(d) An investigation shall be concluded within ninety days of the filing of the claim; provided that the panel may grant an extension of time when necessary. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6, 674-8) (Imp: HRS §§91-2, 674-6, 674-8)

§16-316-31 Investigative report. The panel's investigative staff, under the supervision of the staff attorney, shall prepare a confidential investigative report detailing the findings of the investigation of the claim. Unless otherwise provided by law, the investigative report shall remain confidential and shall not be available to the public. Notwithstanding the confidentiality of the investigative report, a copy of such report may be made available to the parties where the panel or hearings officer determines that it would further the purposes of this chapter. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-32 Notice of hearing. The claim shall be set for hearing forty-five days after completion of the investigative report, or as soon thereafter as the matter may be heard. Wherever practicable, the claim shall be heard on the island where the claimant resides. All parties shall be given written notice of the hearing, which shall include the date, time, and place of hearing. The notice shall further apprise each party of the right to retain legal counsel if so desired. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§674-6, 674-8)

§16-316-33 Prehearing statement. (a) Two days prior to the prehearing conference or ten days prior to the hearing, whichever occurs first, each party shall file with the panel or hearings officer a prehearing statement disclosing the following information:



- (1) A statement of facts;
- (2) Admitted facts;
- (3) All claims for relief and all defenses advanced by the party submitting the prehearing statement and the type of evidence expected to be offered in support of each claim and defense;
- (4) The identity of all witnesses to be called by the party, including their addresses and phone numbers, if known, and a general statement concerning the nature of the testimony expected; and
- (5) A list of all exhibits, including, but not limited to documents, photographs, and other tangible evidence to be introduced at the hearing. A copy of each exhibit shall be attached to the prehearing statement.

(b) All prehearing statements shall be continually amended and each party is under a duty to update information contained in the prehearing statement as and when it becomes available.

(c) The failure to disclose information in the prehearing statement or the failure to update such information may result in the evidence subject to disclosure not being permitted to be introduced at the hearing.

(d) A copy of the prehearing statement with all exhibits attached, as well as any amendments to the prehearing statement, shall be served upon all other parties to the proceeding. [Eff 1/21/93] (Auth: §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-34 Prehearing conference. The panel or the hearings officer may order that a prehearing conference be conducted and attended by all parties to the proceeding. The purpose of the prehearing conference shall be to discuss settlement, simplify the issues, and facilitate the orderly progress of the hearing. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-35 Testimony. (a) All oral testimony taken at the hearing shall be preserved by electronic recording but need not be transcribed.

(b) Such recording of testimony shall not be made available to the parties.

(c) All electronic recordings of testimony shall be erased six months after a final decision is rendered by the panel. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6, 674-9)

§16-316-36 Record. (a) The record shall consist of the following:

§16-316-35

- (1) All correspondence, pleadings, motions, and intermediate rulings;
  - (2) All evidence received or considered, including without limitation, oral testimony, exhibits, and matters officially noted by the panel or hearings officer;
  - (3) All offers of proof and rulings thereon;
  - (4) All proposed findings and exceptions;
  - (5) The recommended decision of the hearings officer who presided at the hearing, if the hearing was held before a hearings officer; and
  - (6) The investigative report or other staff memoranda submitted to the panel or hearings officer.
- (b) The panel or hearings officer, six months after a final decision has been rendered by the panel, may cause exhibits to be returned to the party introducing the exhibits or if the party does not wish their return, order the disposal or destruction of the exhibits. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6, 674-9)

§16-316-37 RESERVED.

§16-316-38 RESERVED.

§16-316-39 Hearings. (a) All hearings shall be informal, and chapters 91 and 92, HRS, shall not apply.

(b) No persons other than the panel or hearings officer, the claimant, the respondent, representatives of the department or other concerned state agency, legal counsel, witnesses, and persons called by the panel to assist the panel in its review of a claim, shall be present during any hearing or other proceedings conducted by the panel or hearings officer, except with the permission of the chairperson.

(c) All hearings shall be heard before the panel or a duly designated hearings officer. All parties shall be afforded a full opportunity to present evidence and argument on all issues involved. The hearing shall be at the time and place set forth in the notice of hearing, but at that time and place may be continued from day to day or adjourned to a later time, a later day, or to a different place without notice other than the announcement thereof at the hearing.

(d) The panel or hearings officer, if there is no dispute as to the facts involved in a particular matter, may permit the parties to proceed by memoranda of law in lieu of a hearing unless the procedure would unduly burden any party

or is otherwise not conducive to the ends of justice. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§674-6, 674-9)

§16-316-40 Procedure at hearing. (a) Unless otherwise stipulated by the parties, which stipulation is approved by the panel or the hearings officer, all hearings shall proceed as follows:

- (1) The parties shall have the opportunity to make opening statements before any evidence is presented, unless they waive the opportunity. The opening statement shall be heard in the following order:
  - (A) Claimant's opening statement; and
  - (B) Respondent's opening statement, unless respondent chooses to reserve same until after presentation of claimant's evidence;
- (2) The claimant's evidence shall be presented first, and shall be followed by the presentation of evidence in support of the respondent's case;
- (3) After presentation of the evidence in support of their respective cases, the parties shall have the opportunity to introduce rebuttal evidence. Rebuttal evidence shall be introduced in the same order as was followed with respect to the introduction of evidence in support of their respective cases;
- (4) Each witness shall be examined first by the party calling the witness before cross-examination by the opposing party;
- (5) After all evidence, including rebuttal evidence, has been presented, the parties shall have the opportunity to make final argument. Final argument shall proceed as follows:
  - (A) Claimant's final argument;
  - (B) Respondent's final argument; and
  - (C) Claimant's final argument in rebuttal which shall be limited to countering matters raised in respondent's final argument; and
- (6) The hearing shall be deemed closed after completion of all final arguments or upon filing of all permitted memoranda and other post hearing submissions or upon the expiration of the time allowed for filing submissions, unless the time is extended, or upon the completion of taking further evidence pursuant to section 16-316-42, whichever is later. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§674-6, 674-9)

§16-316-41 Motion to dismiss. (a) After all evidence has been presented by the claimant in support of the claim, the respondent may move the panel or the hearings officer for an order denying or dismissing the claim or for similar affirmative relief.

(b) If the motion is denied or taken under advisement, the respondent shall have the right to continue with the proceeding as fully as if the motion had not been made. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-42 Taking of further evidence. At any time before the filing of the hearings officer's recommended decision, or if the hearing has been held before the panel, then before the panel's final decision, the hearings officer or panel, sua sponte or upon motion for good cause shown, may reopen a hearing for the purpose of taking further evidence, and shall do so in writing with a statement of reasons therefor. The panel, sua sponte, shall have the discretion to remand a claim or proceeding to the hearings officer for the purpose of taking further evidence. The reopening or remanding shall be at the sole discretion of the hearings officer or panel. Further evidence may be taken either through oral hearing or by certification of questions to the parties. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-43 Proposed findings of fact and conclusions of law. (a) No party shall file written proposed findings of fact and conclusions of law except where ordered in the discretion of the hearings officer or the panel, whichever has conducted the hearing.

(b) Where ordered by the hearings officer or the panel, written proposed findings of fact and conclusions of law shall be filed within twenty-one days after receipt of the order, and shall contain specific references to the record and the legal authorities relied upon. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

§16-316-44 Panel's decision. When the hearing has been held before the panel, the panel, as expeditiously as possible, after the close of the hearing, shall issue its final decision and order together with separate findings of fact and conclusions of law. All findings of fact, conclusions of law, final decisions and orders issued by the panel shall be based upon the whole record and supported by reliable probative and substantial evidence, including facts on which the panel

properly took judicial notice. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§674-6, 674-10)

§16-316-45 Recommended decision. When the hearing has been held before a hearings officer, the hearings officer, as expeditiously as possible, after the close of the hearing, shall file with the panel a recommended decision together with separate findings of fact, conclusions of law, and a recommended order. The decision, findings of fact, conclusions of law, and any order recommended by the hearings officer shall be based upon the whole record and supported by the reliable probative and substantial evidence, including facts of which the hearings officer properly took judicial notice. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§674-6, 674-8)

§16-316-46 Service of recommended decision. A copy of the recommended decision, including findings of fact, conclusions of law, and any recommended order, shall be served upon each party by personal service or by registered or certified mail, return receipt requested. Service of the recommended decision shall be deemed complete upon its mailing to the party's last known address. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§674-6, 674-8)

§16-316-47 Recommended decision, request for review hearing before the panel. Any party adversely affected by the hearings officer's recommended decision, within fifteen days after the receipt of a copy of the decision, may request a review hearing before the panel. Unless the time has been extended, no request for a review hearing before the panel shall be filed or accepted for filing after the time specified, except by leave of the panel for good cause shown. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§674-6, 674-8)

§16-316-48 Transmittal to panel. The hearings officer shall transmit to the panel the entire record together with the recommended decision and any timely filed request for oral argument. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§674-6, 674-8)

§16-316-49 Review hearing before the panel. Whenever a claimant has timely requested a review hearing before the panel, all parties to the proceedings shall be afforded the opportunity to present oral argument to the panel concerning

the recommended decision. The panel shall personally consider the whole record or portions of the record as are cited by the parties either in support of or in opposition to the recommended decision. All parties shall be served with notice of the time and place of the review hearing at least ten days prior to the hearing. Within a reasonable time after argument has been heard, the panel shall issue a written final decision and order, either adopting, modifying, or reversing, in whole or in part, the hearings officer's recommended decision. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§674-6, 674-8, 674-10)

§16-316-50 No request for a review hearing before the panel. When no request for a review hearing before the panel has been filed, the panel, within a reasonable time after the hearings officer's recommended decision has been filed, shall issue a written final decision and order, either adopting or modifying or reversing, in whole or in part, the hearings officer's recommended decision. The panel shall state with specificity in the final decision the reasons for any modification or reversal, in whole or in part, of the hearings officer's recommended decision. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§674-6, 674-8, 674-10)

### SUBCHAPTER 3

#### DECLARATORY RELIEF

§16-316-51 Contents of petition for declaratory relief. Any interested person or the department may petition the panel for a declaratory ruling as to the applicability of any statutory provision or of any rule or order adopted by the panel to a factual situation. Each petition shall state concisely and with particularity the facts giving rise to the petition, including the petitioner's interest, reasons for filing the petition, and the names of any potential respondents, the provision, rule, or order in question, the issues raised, and petitioner's position or contentions with respect thereto. [Eff 1/21/93] (Auth: HRS §§91-8, 674-6) (Imp: HRS §§91-8, 674-6)

§16-316-52 Memorandum of law in support of petition. The petition for declaratory relief shall be accompanied by a memorandum of law in support of the relief requested. [Eff 1/21/93] (Auth: HRS §§91-8, 674-6) (Imp: HRS §§91-8, 674-6)

§16-316-53 Disposition of petition. The panel, as expeditiously as possible after the filing of a petition for declaratory relief, shall:

- (1) Deny the petition where:
  - (A) The petition fails to conform substantially with section 16-316-51 or is not accompanied by a memorandum of law in support of the petition;
  - (B) The petition is frivolous;
  - (C) The matter is not within the jurisdiction of the panel;
  - (D) The petition is based on hypothetical or speculative facts of either liability or damages;
  - (E) There is a genuine controversy of material fact, the resolution of which is necessary before any order or declaratory relief may issue; or
  - (F) There is any other reason justifying denial of the petition;
- (2) Set the petition for argument before the panel in accordance with this subchapter; or
- (3) Assign the petition to the hearings officer for further proceedings in accordance with this subchapter. [Eff 1/21/93] (Auth: HRS §§91-8, 674-6) (Imp: HRS §§91-8, 674-6)

§16-316-54 RESERVED.

§16-316-55 Parties. Unless a petition has been disposed of pursuant to section 16-316-53, in all petitions for declaratory relief where the department is not the petitioner, the department shall be made a party respondent to the proceedings and shall be served accordingly. [Eff 1/21/93] (Auth: HRS §§91-8, 674-6) (Imp: 91-8, 674-6)

§16-316-56 Memorandum in opposition. Each respondent, within fifteen days after the receipt of the petition, may file and serve upon all parties a memorandum in opposition stating concisely and fully the respondent's position or contentions and reasons, including legal authorities. [Eff 1/21/93] (Auth: HRS §§91-8, 674-6) (Imp: HRS §§91-8, 674-6)

§16-316-57 Intervention and intervenor's memorandum of law. Except where a petition has been denied pursuant to section 16-316-53 and subject to section 16-316-7, any interested person may request intervention in a proceeding

§16-316-56

for declaratory relief. Any person permitted to intervene in a proceeding for declaratory relief may file and serve upon petitioner, a memorandum of law which shall state concisely and fully the intervenor's position or contentions and reasons, including legal authorities. [Eff 1/21/93] (Auth: HRS §§91-8, 674-6) (Imp: HRS §§91-8, 674-6)

§16-316-58 Request for additional facts or supplemental memorandum.

The panel or the hearings officer at any time may request of the petitioner or any party, a statement of additional facts or a memorandum, the purpose of which is to clarify a specific factual issue, position, contention, or issue provided the request shall aid the panel in effectuating the ends of justice, or in achieving its purposes, and shall not unduly delay the proceedings or hinder, harass, or unreasonably prejudice any party. [Eff 1/21/93] (Auth: HRS §§91-8, 674-6) (Imp: HRS §§91-8, 674-6)

§16-316-59 Notice of argument. All parties shall be given written notice of the hearing of argument at least fifteen days before the time of the argument. The notice shall include:

- (1) The date, time, place, and nature of the argument;
- (2) The legal authority under which the argument is to be heard;
- (3) Particular sections of the statutes and rules involved; and
- (4) A short and concise statement of issues involved, and the basic facts giving rise to the petition. Attachment of a copy of the petition to the notice of argument satisfies this requirement. The notice shall further apprise each party of their right to retain legal counsel if so desired. [Eff 1/21/93] (Auth: HRS §§91-8, 674-6) (Imp: HRS §§91-8, 674-6)

§16-316-60 RESERVED.

§16-316-61 Argument. Argument shall be heard either before the panel or a hearings officer duly designated. All parties shall be afforded full opportunity to present argument on all issues involved. The argument shall be at the time and place set forth in the notice of argument but at that time and place may be continued from day to day and adjourned to a later day or to a different place without notice other than the announcement thereof at the hearing. [Eff 1/21/93] (Auth: HRS §§91-8, 674-6) (Imp: HRS §§91-8, 674-6)



§16-316-62 Material issue of fact, public interest. If, at any time, it appears that there exists a genuine controversy of material fact the resolution of which is necessary before any order of declaratory relief may issue, or that the petition raises issues of public concern and interest that a proceeding for rule relief would more fairly and effectively aid the panel in achieving its purposes and goals and protect that public concern or interest, the panel or hearings officer may:

- (1) Sua sponte or on motion of any party dismiss the petition for declaratory relief and allow same to be refiled as a petition for hearing or rule relief; or
- (2) Convert the proceeding to one for hearing or rule relief and proceed thereafter as if the petition had been brought originally for hearing or rule relief. If the proceeding is converted to a proceeding for hearing or rule relief, the issues may be restricted to those material facts in issue. [Eff 1/21/93] (Auth: HRS §§91-8, 674-6) (Imp: HRS §§91-8, 674-6)

§16-316-63 Proposed findings of fact and conclusions of law. (a) No party shall file written proposed findings of fact and conclusions of law except where ordered in the discretion of the hearings officer or the panel, whichever has conducted the hearing.

(b) Where ordered by the hearings officer or the panel, written proposed findings of fact and conclusions of law shall be filed within twenty-one days after receipt of the order, and shall contain specific references to the record and the legal authorities relied upon.

(c) When the argument has been held before a hearings officer, the parties shall not, under any circumstances, file proposed findings of fact and conclusions of law with the panel. [Eff 1/21/93] (Auth: HRS §§91-8, 674-6) (Imp: HRS §§91-8, 674-6)

§16-316-64 Panel's decision. (a) When the argument has been held before the panel, the panel, as expeditiously as possible after the close of the argument or submission of all permitted or requested memoranda, whichever is later, shall issue its final decision and order.

(b) When the petition has been contested, and the panel's decision and order is adverse to any party, the panel shall also issue and serve upon each party to the proceeding, together with its final decision and order, separate findings of fact and conclusions of law.

(c) All final decisions and orders and any findings of fact and conclusions of law issued by the panel shall be based upon the whole record and supported by reliable, probative, and substantial evidence, including those facts of which the panel properly took judicial notice. [Eff 1/21/93] (Auth: HRS §§91-8, 674-6) (Imp: HRS §§91-8, 674-6)

§16-316-65 Recommended decision. (a) When the argument has been held before a hearings officer, the hearings officer, as expeditiously as possible after the close of the argument or submission of all requested or permitted memoranda, whichever is later, shall file with the panel the hearings officer's recommended decision and any recommended order.

(b) When the petition has been contested and the recommended decision and order is adverse to any party, the hearings officer shall file with the recommended decision and order separate findings of fact and conclusions of law.

(c) The decision, findings of fact, conclusions of law, and any order recommended by the hearings officer shall be based upon the whole record and supported by reliable, probative and substantial evidence, including those facts of which the hearings officer properly took official notice.

(d) The hearings officer shall serve a copy of the recommended decision and any recommended order, together with any findings of fact and conclusions of law upon each party by personal service or by registered or certified mail, return receipt requested. Where notice of the argument has been served by publication and the party so served has failed to appear at the argument, service of the recommended decision is complete upon its mailing to the party at the party's last known address. [Eff 1/21/93] (Auth: HRS §§91-8, 674-6) (Imp: HRS §§91-8, 674-6)

§16-316-66 Panel's action on recommended decisions. (a) Where the petition has been contested, any party adversely affected by the hearings officer's recommended decision within fifteen days after the receipt of a copy of the decision, may file with the panel written exceptions to the whole or any part of the recommended decision and request review by the panel. Each written exception shall specify the portions of the record and authorities relied upon to sustain each point. A copy of the written exceptions shall be served by the party so excepting upon each party to the proceeding, and upon the hearings officer. Unless the time has been extended, no written exceptions shall be filed or accepted for filing after the time specified, except by leave of the panel for good cause shown.

(b) Where the petition has been contested and written exceptions filed, any party may file and serve upon all other parties and the hearings officer a statement in support of the proposed decision within fifteen days after receipt of a copy of the written exceptions.

(c) Whenever written exceptions have been timely filed and a party has requested an opportunity to present oral argument, all parties to the proceedings shall be afforded the opportunity to present oral argument to the panel concerning the recommended decision. The panel shall consider the whole record or portions of the record as may have been cited by the parties either in support or in opposition to the recommended decision. All parties shall be served with notice of the time and place of argument at least five days prior to the time for argument. Within a reasonable time after argument has been heard, the panel shall issue a final decision and order, either affirming, modifying, or reversing, in whole or in part, the hearings officer's recommended decision.

(d) Where the petition has not been contested, or if no written exceptions have been filed, the panel, within a reasonable time after the hearings officer's recommended decision has been filed, shall issue a written final decision and order, either adopting, modifying, or reversing, in whole or in part, the hearings officer's recommended decision. The panel shall state with specificity in the final decision the reasons for any modification or reversal, in whole or in part, of the hearings officer's recommended decision. [Eff 1/21/93] (Auth: HRS §§91-8, 674-6) (Imp: HRS §§91-8, 674-6)

## SUBCHAPTER 4

### RULE RELIEF

§16-316-67 Contents of petition for rule relief. The department or any interested person may petition the panel for the amendment, adoption, or repeal of a rule. The petition for rule relief shall set forth the text of the rule to be repealed, or the text of any proposed rule, the adoption of which is being sought, or the text of any existing rule, the amendment of which is being sought, together with the proposed amendment. The petition shall further state concisely and with particularity the facts and circumstances giving rise to the petition, including the petitioner's interest and reasons for filing the petition, the necessity for the relief and the anticipated effect or impact of the relief, the questions or issues raised and petitioner's position or contentions with respect thereto. [Eff 1/21/93] (Auth: HRS §§91-6, 674-6) (Imp: HRS §§91-6, 674-6)

§16-316-67

§16-316-68 Disposition. (a) The panel, within the time permitted by chapter 91, HRS, shall either deny the petition or initiate public rulemaking procedures in accordance with this subchapter and chapter 91, HRS.

(b) Without limiting the generality of the foregoing, the panel may deny any petition which:

- (1) Fails to substantially conform with the requirements of section 16-316-67;
- (2) Discloses insufficient reasons justifying the institution of public rulemaking procedures; or
- (3) Concerns a matter not within the jurisdiction of the panel. [Eff 1/21/93] (Auth: HRS §§91-6, 674-6) (Imp: HRS §§91-6, 674-6)

§16-316-69 Notice of determination. The panel shall promptly notify the petitioner in writing of its determination either to deny the petition or to initiate rulemaking procedures. If the panel denies the petition, the panel shall state the reasons for the denial in the notice to petitioner. [Eff 1/21/93] (Auth: HRS §§91-6, 674-6) (Imp: HRS §§91-6, 674-6)

§16-316-70 Determination final. Unless otherwise provided by law, the petitioner shall have no right to move the panel for reconsideration or to seek judicial review of any determination. [Eff 1/21/93] (Auth: HRS §§91-6, 674-6) (Imp: HRS §§91-6, 674-6)

§16-316-71 Additional facts or supplemental memorandum. The panel may require the petitioner or any person or the department to submit a statement of additional facts or a memorandum, the purpose of which is to clarify a specific factual issue, position, or contention which will reasonably aid the panel. [Eff 1/21/93] (Auth: HRS §§91-6, 674-6) (Imp: HRS §§91-6, 674-6)

§16-316-72 Public hearing. Subject to sections 16-316-77 and 16-316-78, a public hearing shall be held for a petition for rule relief considered by the panel. The hearing shall be at the time and place set forth in the notice of public hearing but at that time and place may be continued from day to day or adjourned to a later time, a later day, or to a different place without notice other than the announcement thereof at the hearing. The panel shall afford the department and all interested persons an opportunity to present data, their views or arguments,

orally or in writing. [Eff 1/21/93] (Auth: HRS §§91-6, 674-6) (Imp: HRS §§91-3, 674-6)

§16-316-73 Notice of public hearing. Notice of the public hearing shall be made in accordance with the provisions of chapters 91 and 92, HRS. [Eff 1/21/93] (Auth: HRS §§91-6, 674-6) (Imp: HRS §§91-3, 92-41, 674-6)

§16-316-74 Procedure at public hearing. At the commencement of the public hearing, the member of the panel presiding at the public hearing shall read the notice of hearing and shall then briefly prescribe the procedure to be followed at the public hearing. All witnesses testifying at the public hearing shall state their name, address, and who, if anyone, the witness represents. Every witness shall be subject to questioning by members of the panel or by any other representative of the panel. Questioning of witnesses by other persons shall not be permitted except when the presiding member of the panel expressly permits that questioning. [Eff 1/21/93] (Auth: HRS §§91-6, 674-6) (Imp: HRS §§91-3, 674-6)

§16-316-75 Record of public hearing. (a) A record shall be made of all oral testimony taken at the hearing which record may be written minutes or verbatim.

(b) Testimony given at the public hearing may be electronically recorded verbatim by the panel at its sole discretion, either sua sponte or upon the request of any interested party. It shall not be necessary to transcribe the electronic recording.

(c) The written minutes or electronic record of the proceeding shall constitute the official record of the testimony taken at the hearing, and shall remain in the possession of the panel.

(d) All written testimony shall be received and made part of the public record. [Eff 1/21/93] (Auth: HRS §91-6, 674-6) (Imp: HRS §§91-6, 674-6)

§16-316-76 Decision. (a) The panel shall render its decision at the public hearing or at a time, date, and place as is announced at the public hearing. The panel, upon the request of any interested person, shall issue a concise statement of the principal reasons for and against its decision. In making its decision, the panel shall consider all written and oral submissions respecting the proposed rule

relief. Unless otherwise provided by law, the requirements of section 16-316-22 shall not apply to a decision rendered pursuant to this section.

(b) Unless otherwise provided by law, any decision rendered pursuant to this section shall not be subject to a motion for reconsideration or judicial review. [Eff 1/21/93] (Auth: HRS §§91-6, 674-6) (Imp: HRS §§91-3, 674-6)

§16-316-77 Waiver. The requirements for public hearing and for notice thereof may be waived by the governor when the panel, as a condition to receiving federal funds, is required by federal provisions to adopt rules and the panel is allowed no discretion in interpreting the federal provisions as to the rules required to be adopted. The panel shall make known to the public the proposed adoption, amendment, or repeal of any rule pursuant to this section by publishing in a newspaper of general circulation in this State, at least once prior to the waiver of the governor, a statement as to the substance of the proposed rule change. [Eff 1/21/93] (Auth: HRS §§91-6, 674-6) (Imp: HRS §§91-3, 674-6)

§16-316-78 Emergency rulemaking. (a) The panel may adopt emergency rules upon a finding that there is imminent peril to the public health, safety, or morals and pursuant to the requirements of sections 91-3 and 91-4, HRS.

(b) The panel's determination that there is imminent peril and the reasons therefor shall be stated in, and as part of the emergency rule.

(c) The panel shall make the emergency rule known to the public by publishing the rule, at least once, in a newspaper of general circulation in the State, within five days from the date the rule is filed with the lieutenant governor. [Eff 1/21/93] (Auth: HRS §§91-6, 674-6) (Imp: HRS §§91-3, 91-4, 674-6)

§16-316-79 No restriction on panel. Nothing contained in this subchapter shall be construed to prohibit or restrict the right of the panel, sua sponte, from initiating its own rulemaking proceeding on any matter within its jurisdiction, whether disclosed in any petition or not. [Eff 1/21/93] (Auth: HRS §§91-6, 674-6) (Imp: HRS §§91-3, 674-6)

§16-316-80 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 1/21/93] (Auth: HRS §§91-2, 674-6) (Imp: HRS §§91-2, 674-6)

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Chapter 16-316, Hawaii Administrative Rules, on the Summary page dated December 14, 1992, was adopted on December 14, 1992, following public hearings held on November 30, December 1, December 2, and December 3, 1992 after public notice was given in the Honolulu Advertiser, the Garden Island, the Maui News, the West Hawaii Today, and the Hawaii Tribune Herald on October 30, 1992.

The adoption of chapter 16-316 shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Peter L. Trask

PETER LIHOLIHO TRASK  
Chairperson, Hawaiian Home Lands Trust  
Individual Claims Review Panel

/s/ Robert A. Alm

ROBERT A. ALM  
Director, Department of  
Commerce and Consumer Affairs

APPROVED:

/s/ John Waihee

JOHN WAIHEE  
Governor  
State of Hawaii

Dated: Jan 11, 1993

APPROVED AS TO FORM:

/s/ David A. Webber

Deputy Attorney General

Filed





DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Adoption of Chapter 16-316  
Hawaii Administrative Rules

December 14, 1992

SUMMARY

Chapter 316 of Title 16, Hawaii Administrative Rules, entitled "Hawaiian Home Lands Trust Individual Claims Review Panel Administrative Practice and Procedure" is adopted.